

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board concludes the preliminary hearing Order should be affirmed.

On September 27, 1999, respondent's office building was threatened by flood water. At that time, claimant was employed by the respondent as a sports editor. While claimant was at work on September 27, 1999, he and some of his fellow employees volunteered to sandbag the office building in an effort to protect respondent's business from the flood waters. Claimant alleges he hurt his back and left knee while lifting sandbags, carrying sandbags, and helping two other employees carry a heavy water pump to the office building's basement.

Respondent contends claimant's alleged injuries did not arise out of and in the course of his employment. Claimant's job duties were that of a sports editor, and respondent did not require claimant to sandbag the office building. Therefore, since claimant volunteered and was not required by respondent to do the sandbagging, respondent argues claimant's alleged injuries did not arise out of and in the course of his employment.

The Appeals Board finds the preliminary hearing record has established claimant volunteered to sandbag respondent's office building during his regular working hours. Therefore, the Appeals Board finds that claimant's alleged injuries occurred in the course of his employment.¹ For claimant's injuries to have arisen "out of" his employment, the accident causing the injuries is required to have some causal connection between the accidental injury and the employment. Injuries arise out of the employment if they arise out of the nature, conditions, obligations, and incidents of the employment.²

The Appeals Board finds claimant's testimony and the medical treatment records, admitted into evidence at the preliminary hearing, prove claimant has a low back and left knee injury. The Appeals Board also finds claimant's testimony established that those injuries occurred while he was sandbagging respondent's office building. Furthermore, the Appeals Board concludes the sandbagging duties, although voluntary, had a causal connection to claimant's employment because claimant's sandbagging efforts were a benefit to the respondent by protecting respondent's office from damage and business interruption.

A day or two following the sandbagging incident, claimant testified, he notified his supervisor, Michael A. Rogers, that he had hurt his back and left knee while lifting and carrying sandbags. Also, on September 30, 1999, claimant had to undergo a required treadmill exercise test because of an angioplasty procedure performed in 1995. Claimant was unable to complete the test because of back pain. Claimant testified he provided his supervisor with a medical note from his cardiologist that indicated he was unable to complete the test because of a recent back injury. But claimant's supervisor, Michael A.

¹ See Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

² See Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

Rogers, testified he did not know claimant was alleging he was injured sandbagging until November 9, 1999.

On November 8, 1999, respondent's director, Ronald S. Atteberry, terminated claimant for allegedly using the Internet for nonbusiness purposes. The day following the termination, claimant notified Debbie Ingram, respondent's office and human resources manager, that he had injured his low back and left knee on September 27, 1999, while sandbagging the office building and needed medical treatment. Claimant acknowledged this was the first time he notified Ms. Ingram of his work-related injuries. But claimant testified the reason he had not notified Ms. Ingram in the past was because he understood he was required to notify his supervisor of work-related accidents.

The current notice statute requires an injured worker to notify the respondent of a work-related accident within ten days thereof or establish just cause within seventy-five days for the reason for not giving the ten-day notice.³ In this case, the claimant; his supervisor, Michael Rogers; respondent's director, Ronald Atteberry; and respondent's office and human resources manager, Debbie Ingram; all testified before the Administrative Law Judge at the preliminary hearing. As noted above, these witnesses provided conflicting testimony. In finding claimant gave respondent timely notice of the September 27, 1999, accident, the Administrative Law Judge simply believed claimant's testimony and did not believe the testimony of respondent's representatives. At this juncture of the proceedings, because the Administrative Law Judge had the opportunity to observe the witnesses testify in person, the Appeals Board finds some deference should be given to the Administrative Law Judge's conclusions. Therefore, giving some deference to the Administrative Law Judge, the Appeals Board finds claimant provided respondent with timely notice of the September 27, 1999, accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' January 6, 2000, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

³See K.S.A. 44-520.

c: Russell B. Cranmer, Wichita, KS.
 Kathleen M. Lynch, Kansas City, KS.
 Nelsonna Potts Barnes, Administrative Law Judge
 Philip S. Harness, Director